

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8917 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

( No. 1 to 5 NO )

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SARPANCH SHRI

Versus

STATE OF GUJARAT

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Appearance:

MR BD KARIA for Petitioner

GOVERNMENT PLEADER for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 3

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CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 30/07/98

ORAL JUDGEMENT

Ld. advocate Mr. Karia appearing for the petitioner prays to delete Respondent No.3 - Taluka Development Officer, Maliya - Miyana from the present proceedings. Said prayer is granted. Petitioner is directed to amend the cause title of the petition accordingly.

Rule. Ld. AGP Ms. Gajjar waives service of rule for Respondent No. 1 & 2. At the request of Ld. advocates appearing for the parties, matter is taken up for final hearing. Main contention of Ld. advocate Mr. Karia is that the supersession of Panchayat only on the ground of inability to pass the budget on/or before the specified date is not just, proper or legal. It is submitted that the action of the Government is politically motivated. He has also pointed out that the budget was ultimately approved by the Panchayat and there is no iota of doubt under which it can be inferred that the Local Self Government should be superseded. Mr. Karia has pointed out that, the fact of the case on hand is identical with the case decided by this Court, reported in 1991 (2) GLR, pg. 811. At the time of deciding the LPA in case of Nathalal Manilal Patel & Anr. V. A.R. Banerjee, Development Commissioner, the Division Bench of this Court has considered all relevant aspects. Mr. Karia has taken this Court through the relevant paragraphs, that is Para no. 8 & 9 of the judgment. Relevant paras read thus:-

" Para-8. In our opinion, the combined reading of Secs. 124, 126 and Rule 161 clearly indicates that the provision for approving the budget estimate before March 31 is not mandatory but directory. No consequence is provided for failure to approve budget estimate before March 31. The argument is that the Panchayat could not have approved budget after March 31 as it would result in perpetuating the mischief which is sought to be prevented by sub-sec. (1) of Sec. 126. No sum can be expended unless such sum is included in the budget estimate approved under Sec. 124 or 125 except in case of pressing emergency under Sec. 126(1). Now, if the above argument that the Panchayat is incompetent to approve the budget estimate after March 31 is accepted, all the functions of the Panchayat, which require incurring of expenditure would come to a stand-still. There is hardly any function which the Panchayat could perform without incurring any expenditure. Therefore, once the Panchayat fails to approve the budget estimate on March 31, it cannot perform any of its functions, if the above argument is accepted. It is true that, ordinarily the Panchayat should approve the budget estimate of the next year before the commencement of that year. But there may be

circumstances under which it may not be possible for the Panchayat to do so and if that happens, would it not be open to the Panchayat to approve the budget estimate on subsequent date is the question which we have to answer. In our opinion, even if it is permissible to do so, it would be a hyper technical view to hold that provision to approve budget estimate before March 31, every year contained in clause (b) of Rule 161 of the Rules is mandatory so as to require strict compliance. It is true that the said provision does lay down that the Panchayat shall approve the budget estimate before March 31, every year. But having regard to the provisions of Secs. 124 and 126, word 'shall' should be read as 'may'. In other words, the above provision to approve the budget estimate before March 31 is directory provision requiring no strict compliance, but substantial compliance. Ordinarily, as already observed above, budget estimate has to be approved before the commencement of the next financial year but if, for some reason, it is not possible to do so, more fact that the budget estimate has been approved after the commencement of the next year would not render the action of approving the budget illegal or contrary to the provisions of the Act and the Rules. If the budget estimate is not approved before March 31 for some valid reason, such estimate can be approved within reasonable time thereafter depending upon the facts and circumstances of the case. In the instance case, budget estimate could not be approved on March 31, 1990, although the meeting of the Panchayat was convened for that purpose on that date, because of some glaring mistakes noticed by the Taluka Development Officer, which required to be corrected. The meeting for approval of the budget was, therefore, postponed to April 17, 1990. But before the budget estimate could be approved on that day, there was an order of the Civil Court restraining the Panchayat from approving the budget. It was only after the order of the Civil Court was vacated by the District Court that the budget estimate could be approved on May 17, 1990. Under these circumstances, it must be held that the Panchayat had, within reasonable time, approved the estimate of budget and that there was substantial compliance with the provisions of Sec. 124 of the Act and Rule 161 of the Rules.

9. When the Development Commissioner passed order on May 21, 1990, holding that the Panchayat was incompetent to perform its function, the budget estimate was already approved. Since the budget estimate was approved, we fail to see how it could be held that the Panchayat was incompetent to perform its duties or functions. On the date on which the Development Commissioner passed the order, there was nothing to prevent the Panchayat from incurring expenditure which was included in the budget estimate for discharging its duties and functions. Mere fact that the budget estimate was not approved before March 31, 1990 would not necessarily lead to the conclusion that the Panchayat was incompetent to perform its functions. There is no other ground on which the Panchayat has been held to be incompetent to perform its functions. Therefore, in our opinion, considering all the facts and circumstances of the case, the Development Commissioner was not justified in holding that the Panchayat was incompetent to perform its functions. "

Ld. advocate Mr. Karia submits that, though the above cited judgment is under the old Act but the provisions in the new Act is identical and enabling provision, so the ratio laid down by the abovesaid judgment would squarely applicable in this case also, and therefore the action of the State superseding Maliya-Miyana Gram Panchayat requires to be set aside.

After going through the judgment relied by Ld. advocate Mr. Karia, Ld AGP Ms. Gajjar is not in a position to defend the order of the Government because the law has been discussed thoroughly by the Division Bench. I do not see any need to go for detailed discussion as to the facts of the present case and the aforesaid case. It is nobody's case that the facts of aforesaid case and the present case on hand are materially different and, therefore the rule shall have to be made absolute and the same is made absolute accordingly. The action of the State Government superseding Maliya-Miyana Panchayat and the consequent notification issued by the State Government to this effect are quashed and set aside. Looking to the peculiar facts and circumstances of the case, no cost is awarded. Rule made absolute. Petition stands disposed of.

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